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# State v. Rhoades Appellant's Reply Brief Dckt. 40784

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 40784
	)	
v.	)	ADA COUNTY NO. CR 2012-550
	)	
DUSTIN THOMPSON	)	REPLY BRIEF
RHOADES,	)	
	)	
Defendant-Appellant.	)	

---

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA

HONORABLE MELISSA MOODY  
District Judge

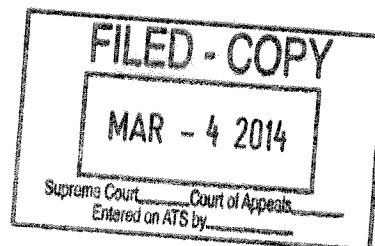
SARA B. THOMAS  
State Appellate Public Defender  
State of Idaho  
I.S.B. #5867

ERIK R. LEHTINEN  
Chief, Appellate Unit  
I.S.B. #6247

BRIAN R. DICKSON  
Deputy State Appellate Public Defender  
I.S.B. #8701  
3050 N. Lake Harbor Lane, Suite 100  
Boise, ID 83703  
(208) 334-2712

ATTORNEYS FOR  
DEFENDANT-APPELLANT

KENNETH K. JORGENSEN  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534



ATTORNEY FOR  
PLAINTIFF-RESPONDENT

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## STATEMENT OF THE CASE

### Nature of the Case

Dustin Rhoades appealed, contending that the district court abused its discretion when it revoked his probation and executed his underlying sentence without modification. He also argued that the Idaho Supreme Court violated his rights to due process and equal protection by denying his motion to augment the record with certain transcripts. This reply brief is necessary to address the State's argument in response to the due process and equal protection argument.

The State responds to the due process argument, asserting that, under the Idaho Supreme Court's recent decision in *State v. Brunet*, 155 Idaho 724 (2013), the record does not demonstrate a colorable need for the inclusion of the requested transcripts in this appellate record. Mr. Rhoades concedes that the State's argument under the standard articulated in *Brunet* is correct and, therefore, would withdraw his argument in this regard.

The State's response to Mr. Rhoades' argument as to why the decision to revoke probation and execute the underlying without modification constituted an abuse of discretion is not remarkable. Therefore, no further argument in that regard is necessary.

### Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Rhoades' Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

## ISSUES

1. Whether the Idaho Supreme Court denied Mr. Rhoades due process and equal protection when it denied his renewed motion to augment the record with transcripts necessary for review of the issues on appeal.
2. Whether the district court abused its discretion when it revoked Mr. Rhoades' probation or, alternatively, when it executed his sentence without modification when it did so.

## ARGUMENT

### I.

#### The Idaho Supreme Court Denied Mr. Rhoades Due Process And Equal Protection When It Denied His Renewed Motion To Augment The Record With Transcripts Necessary For Review Of The Issues On Appeal

In *Brunet*, the Idaho Supreme Court reaffirmed that, in order to show that a requested transcript is necessary to provide an adequate appellate record, the record “must make out a colorable need for the additional transcripts.” *Brunet*, 155 Idaho at 727. For there to be a colorable need, the information contained in the transcripts needs to have been part of the record before the district court. See *id.* at 728. This is because the appellate courts conduct “an independent review the entire record available to the trial court at sentencing, focusing on the objectives of criminal punishment.” *Id.* at 728; *State v. Pierce*, 150 Idaho 1, 5 (2010). In light of the standard articulated in *Brunet* and the State’s arguments in that regard (Resp. Br., pp.7-11), Mr. Rhoades is withdrawing his argument in this regard.

### II.

#### The District Court Abused Its Discretion When It Revoked Mr. Rhoades’ Probation Or, Alternatively, When It Executed His Sentence Without Modification When It Did So

Because the State’s argument concerning the district court’s decision to revoke Mr. Rhoades’ probation and execute his sentence without modification is not remarkable, no further reply is necessary. Accordingly, Mr. Rhoades simply refers the Court back to pages 23-30 of his Appellant’s Brief.

### CONCLUSION

Mr. Rhoades respectfully requests that this Court vacate his judgment of conviction and reduce his sentence as it deems appropriate, or, in the alternative, remand the case for a new disposition hearing.

DATED this 4<sup>th</sup> day of March, 2014.

A handwritten signature in black ink, appearing to read "B. R. Dickson", written over a horizontal line.

BRIAN R. DICKSON

Deputy State Appellate Public Defender



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4<sup>th</sup> day of March, 2014, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

DUSTIN THOMPSON RHOADES  
INMATE #77308  
ICIO  
381 W HOSPITAL DRIVE  
OROFINO ID 83544

MELISSA MOODY  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

JONATHAN LOSCHI  
ADA COUNTY PUBLIC DEFENDER'S OFFICE  
E-MAILED BRIEF

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
P.O. BOX 83720  
BOISE, ID 83720-0010  
Hand delivered to Attorney General's mailbox at Supreme Court.



EVAN A. SMITH  
Administrative Assistant

BRD/eas